

## **TITLE GUARANTY SECOND ANNUAL CONFERENCE**

November 15, 2006  
Crown Plaza - Five Seasons Hotel  
Cedar Rapids, Iowa

### **FORECLOSURE LAW AND LEGISLATIVE UPDATE**

#### **I. Common Title Issues in Foreclosures.**

1. Legal description.
2. Stub abstract.
3. Correct parties in foreclosure including spouses.
4. Lis pendens.
5. Service on all parties.
6. Publication.
7. Legal correct.
8. Motion for Summary Judgment and/or Default.
9. Decree.
10. Six-month delay or six-month redemption.
11. United States of America.
12. Estate proceedings.
13. Prisoners as defendants.
14. Sheriffs' Sales.
15. Prior lienholders.
16. Spouse not executing mortgage instrument.

#### **II. Forms of Petitions and Decrees.**

1. Petitions (see attached Exhibit "A").
2. Foreclosure Decree with no delay (see attached Exhibit "B").
3. Foreclosure Decree with delay (see attached Exhibit "C").

#### **III. House File 2786 -- Major revisions to mortgage foreclosure law. See attached House File (see attached Exhibit "D").**

David M. Erickson is a senior shareholder at the Davis, Brown, Koehn, Shors & Roberts Law Firm. He has practiced primarily in the area of real estate law since 1979. David is a current member of the Iowa State Bar Association's Title Standards Committee as well as a member of the Abstracting Standards Committee of the Iowa Land Title Association.

IN THE IOWA DISTRICT COURT FOR «COURT\_COUNTY» COUNTY

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«PLAINTIFF»,	)	EQUITY NO. «Case_No»
«Plaintiff_taxid»	)	
	)	
Plaintiff,	)	
	)	
vs.	)	FORECLOSURE PETITION
	)	
«DEFENDANT1», «DEFENDANT2»,	)	
«DEFENDANT3», «DEFENDANT4»,	)	
«DEFENDANT5», «DEFENDANT6» and	)	
«DEFENDANT7»,	)	
Defendants.		

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NOTICE

**THE PLAINTIFF HAS ELECTED FORECLOSURE WITHOUT REDEMPTION. THIS MEANS THAT THE SALE OF THE MORTGAGED PROPERTY WILL OCCUR PROMPTLY AFTER ENTRY OF JUDGMENT UNLESS YOU FILE WITH THE COURT A WRITTEN DEMAND TO DELAY THE SALE. IF YOU FILE A WRITTEN DEMAND, THE SALE WILL BE DELAYED UNTIL SIX MONTHS FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING OR UNTIL TWO MONTHS FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS YOUR RESIDENCE BUT NOT A ONE-FAMILY OR TWO-FAMILY DWELLING. YOU WILL HAVE NO RIGHT OF REDEMPTION AFTER THE SALE. THE PURCHASER AT THE SALE WILL BE ENTITLED TO IMMEDIATE POSSESSION OF THE MORTGAGED PROPERTY. YOU MAY PURCHASE AT THE SALE.**

COMES NOW the Plaintiff, «Plaintiff», and respectfully states to the Court the following as its cause of action against the Defendants:

1. The Plaintiff, «Plaintiff», elects to foreclose without redemption pursuant to Iowa Code Section 654.20. The mortgaged property which is the subject of this action is not used for an agricultural purpose. The mortgaged property is a one-family or two-family dwelling.

2. The Plaintiff, «Plaintiff», is a corporation duly authorized to transact business in the State of Iowa.

3. The Defendants, «Defendant1» and «Defendant2», (are/may be) a married couple and are residents of «Court\_County» County, Iowa.

4. The Defendants, \_\_\_\_\_, are made a party to this cause of action because they may claim some right, title or interest in the property which is the subject of this action including but not limited to by reason of their appearance in the chain of title to the property which is the subject of this cause of action. The Defendants' rights to the property the subject of this action are junior to the Plaintiff.

5. The Defendant, «Defendant3», is joined as a party to this action because it may claim some right, title or interest in the property which is the subject of this action including but not limited to by virtue of «Defendant3\_judgmentmortgage». The Defendant's rights to the property which is the subject of this action are junior to the Plaintiff.

6. The Defendant, «Defendant4», is joined as a party to this action because it may claim some right, title or interest in the property which is the subject of this action including but not limited to by virtue of «Defendant4\_judgmentmortgage». The Defendant's rights to the property which is the subject of this action are junior to the Plaintiff.

7. The Defendant, «Defendant5», is joined as a party to this action because it may claim some right, title or interest in the property which is the subject of this action including but not limited to by virtue of «Defendant5\_judgmentmortgage». The Defendant's rights to the property which is the subject of this action are junior to the Plaintiff.

8. The Defendant, «Defendant6», is joined as a party to this action because it may claim some right, title or interest in the property which is the subject of this action including but not limited to by virtue of «Defendant6\_judgmentmortgage». The Defendant's rights to the property which is the subject of this action are junior to the Plaintiff.

9. The Defendants, Parties in Possession, are made parties to this cause of action because they may claim some right, title or interest in the property which is the subject of this action due to the fact that the Plaintiff is credibly informed and believes that they may be tenants in possession of the property the subject of this cause of action. The Defendants' rights to the property which is the subject of this action are junior to the Plaintiff.

10. On or about «mortgagenote\_date», the Defendant(s), «mortgagors», executed and delivered to «mortgagee», one certain Promissory Note in the principal sum of «mortgagenote\_amount\_written\_out» Dollars (\$«mortgagenote\_amount\_numerical»). A copy of the Note is attached hereto as Exhibit "A" and by this reference incorporated herein.

11. To secure payment of the Note, the Defendant(s), «mortgagors», executed and delivered to «mortgagee» one certain **Purchase Money Mortgage** dated «mortgagenote\_date», which Mortgage was filed on «mortgage\_file\_date», in «bookpage» of the «Court\_County» County Recorder's Office, upon the following-described real estate, to-wit:

«legal\_description» «extra\_legal»

12. A copy of the Purchase Money Mortgage together with the Recorder's Certificate thereon is attached hereto as Exhibit "B" and by this reference incorporated herein.

13. On or about «assignment1\_date», «mortgagee» sold, assigned and delivered to «assignee1» the Note and Mortgage referred to herein as Exhibits "A" and "B". Said

Assignment was in writing and recorded on «assignment1\_filed\_date» in «assignment1\_bookpage», records of «Court\_County» County. A copy of said Assignment is attached hereto as Exhibit “\_\_\_” and incorporated herein by this reference.

14. On or about «assignment2\_date», «assignee1» sold, assigned and delivered to «assignee2» the Note and Mortgage referred to herein as Exhibits “A” and “B”. Said Assignment was in writing and recorded on «assignment2\_filed\_date» in «assignment2\_bookpage», records of «Court\_County» County. A copy of said Assignment is attached hereto as Exhibit “\_\_\_” and incorporated herein by this reference.

15. On or about «assignment3\_date», «assignee2» sold, assigned and delivered to «assignee3» the Note and Mortgage referred to herein as Exhibits “A” and “B”. Said Assignment was in writing and recorded on «assignment3\_filed\_date» in «assignment3\_bookpage», records of «Court\_County» County. A copy of said Assignment is attached hereto as Exhibit “\_\_\_” and incorporated herein by this reference.

16. The Mortgage and Note is a Purchase Money Mortgage and provides that in case of default the holder may declare the entire principal and the interest accrued thereon due and payable and the Mortgage may be foreclosed.

17. The Defendant(s), «mortgagors», (has/have) failed to pay the Note and interest thereon as provided by the terms of the Note.

18. By reason of the failure to pay the Note and interest, the Plaintiff has elected and does hereby elect in accordance with the terms and conditions of the Note and Mortgage to declare the whole of the Note due and payable forthwith and to exercise its right to enforce

payment of the entire Note as provided by the Note and to foreclose the Mortgage given to secure the same.

19. The unpaid balance due on the Note after allowing all credits due to the Defendants is the sum of «unpaid\_balance\_written\_out» Dollars (\$«unpaid\_balance\_numerical»), which is the principal balance, plus interest calculated at the default rate of «interest\_rate\_numerical»% per annum from «interest\_due\_date». Interest accrues on the said sum at the rate of \$«per\_diem» per day.

20. In order to commence this foreclosure proceeding the Plaintiff has expended title costs of \$«abstract\_fees\_numerical», escrow advances of \$«total\_escrow\_advances», corporate advances of \$«corporate\_advances», «other\_description» of \$«other\_amount» and late charges of \$«late\_charges», to all of which sums the Plaintiff is entitled to a judgment against the property with interest at the rate of «interest\_rate\_numerical»% per annum, costs and accruing costs including but not limited to any and all advances made by the Plaintiff for taxes, insurance, property preservation and other costs between the time of the Foreclosure Decree and the time of Sheriff's Sale, including reasonable attorney's fees.

21. The Plaintiff is the owner and holder of the Note and Mortgage, due demand has been made for payment, and payment has been refused.

22. Under the terms of the Mortgage a receiver may be appointed.

23. The Plaintiff gave a Notice of Right to Cure and more than thirty (30) days have elapsed since the notice was given. A copy of said Notice is attached hereto as Exhibit “\_\_\_” and incorporated herein by this reference.

24. The Plaintiff hereby waives their right to a deficiency judgment.

25. Under the terms of said Note and Mortgage, the Defendant(s), «mortgagors», agreed to pay attorney's fees and all costs in connection with the proceeding to enforce or foreclose the Mortgage. Attached hereto as Exhibit "\_\_\_\_" and incorporated herein by this reference is an Affidavit of Attorney's Fees as required by Iowa Code § 625.22 (2003).

WHEREFORE, the Plaintiff, «Plaintiff», prays for judgment in rem against the real estate described above, for the sum of «unpaid\_balance\_written\_out» Dollars (\$«unpaid\_balance\_numerical»), which is the principal balance, plus interest thereon at the rate of «interest\_rate\_numerical»% per annum from «interest\_due\_date», such amount equaling \$«per\_diem» per day, the costs of this action, including title costs of \$«abstract\_fees\_numerical», escrow advances of \$«total\_escrow\_advances», corporate advances of \$«corporate\_advances», «other\_description» of \$«other\_amount», late charges of \$«late\_charges», reasonable attorney's fees and additional sums for continuing the abstract of title or other purposes authorized by said Note and Mortgage and by Iowa law and that said sums be declared a lien upon the premises above described from «mortgagenote\_date», the date of the Plaintiff's Mortgage, prior and superior to any right, title, lien or interest of the Defendants or any of them therein; that the Plaintiff's Mortgage be foreclosed; that any right, title, lien or interest of the Defendants or any of them in said property be declared junior and inferior to the lien of Plaintiff's Mortgage; that a special execution issue for the sale of the mortgaged premises or so much thereof as may be necessary to satisfy the judgment including interest, costs, and accruing costs including but not limited to any and all advances made by the Plaintiff for taxes, insurance, property preservation and other costs between the time of the Foreclosure Decree and the time of Sheriff's Sale, and that from and after said sale under special execution, the right,



title, lien or interest of the Defendants in and to the mortgaged premises be forever cut off, barred and foreclosed, and the purchaser at said sale take free and clear of any right, title, lien or interest of the Defendants or any of them.

The Plaintiff further prays for a Writ of Possession to be issued under the seal of this Court, directed to the Sheriff of «Court\_County» County, Iowa, commanding him to put the purchaser at said sale under special execution or a successor in interest in the possession of the premises; and that a receiver be appointed to take charge of the mortgaged premises during the period of foreclosure for the purpose of preserving the mortgaged premises for the benefit of all concerned.

The Plaintiff further prays for such other and further relief as the Court may deem just and equitable under the circumstances.

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«Plaintiff\_atty» («Plaintiff\_atty\_pkno»)  
The Financial Center  
666 Walnut Street, Suite 2500  
Des Moines, Iowa 50309-3993  
Telephone: (515) 288-2500  
Facsimile: (515) 243-0654

ATTORNEY FOR THE PLAINTIFF

OF COUNSEL:

DAVIS, BROWN, KOEHN,  
SHORS & ROBERTS, P.C.  
The Financial Center  
666 Walnut Street, Suite 2500  
Des Moines, Iowa 50309-3993  
Telephone: (515) 288-2500

IN THE IOWA DISTRICT COURT FOR «COURT\_COUNTY» COUNTY

---

«PLAINTIFF»,	)	EQUITY NO. «Case_No»
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	ATTORNEY'S FEE AFFIDAVIT
«DEFENDANT1», «DEFENDANT2»,	)	
«DEFENDANT3», «DEFENDANT4»,	)	
«DEFENDANT5», «DEFENDANT6» and	)	
«DEFENDANT7»,	)	
Defendants.		

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STATE OF IOWA     )  
                              ) ss:  
COUNTY OF POLK    )

I, «Plaintiff\_atty», being first duly sworn on oath, hereby depose and state that I am a member of the firm of Davis, Brown, Koehn, Shors & Roberts, P.C., the attorneys for the Plaintiff in the above-entitled cause; that the Note and Mortgage sued upon herein are in my possession as attorney for the Plaintiff; that I have read the foregoing Petition and am familiar with the contents thereof, and the allegations contained therein are true as I verily believe.

I further depose and state that I am a regularly practicing attorney in the Courts of the State of Iowa; that the attorney's fees prayed for herein are for services rendered and to be rendered by me as attorney for the Plaintiff in this action; that there has been no agreement, express or implied between me and any other person or persons except other practicing attorneys engaged with me in this action, for a division or sharing of the attorney's fees prayed for herein.

EXHIBIT "\_\_\_\_"

\_\_\_\_\_  
«Plaintiff\_atty»

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public, State of Iowa

IN THE IOWA DISTRICT COURT FOR «COURT\_COUNTY» COUNTY

---

«PLAINTIFF»,	)	EQUITY NO. «Case_No»
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	FORECLOSURE DECREE
«DEFENDANT1», «DEFENDANT2»,	)	
«DEFENDANT3», «DEFENDANT4»,	)	
«DEFENDANT5», «DEFENDANT6» and	)	
«DEFENDANT7»,	)	
Defendants.		

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BE IT REMEMBERED that on this \_\_\_\_ day of \_\_\_\_\_, 2006, the above-entitled cause coming on for hearing on Motion for (Default)(Summary) Judgment, Plaintiff, «Plaintiff», appearing by its attorney, «Plaintiff\_atty»; and the Defendants, «default\_defendants», appearing not and after inspection of the file and proof of service, the Court finds that good and sufficient service of original notice has been had on the Defendants, including the Defendants, «publication\_defendants», by publication pursuant to Iowa Rules of Civil Procedure, the Court further finds that the (Plaintiff sought diligently to learn the mailing address of these Defendants and that such an address is unknown although diligent inquiry has been made to ascertain the same,)(address to which the copy of the Notice was sent was the last known mailing address of «publication\_defendants»,) and that the Plaintiff has also served the Defendants, «default\_defendants», with NOTICE OF INTENT TO FILE WRITTEN APPLICATION FOR DEFAULT pursuant to RCP 1.972(2)(a) by sending such Notice by

ordinary mail to the last known address of the party claimed to be in Default and its attorney, if known, and more than ten days have elapsed since serving such notice.

The Court further finds that it has jurisdiction of the subject matter and parties to this action. The Court further finds, after hearing the proofs of the Plaintiff and the statement of counsel, that the issues are with the Plaintiff and that the Plaintiff is entitled to judgment and decree as prayed. The Court further finds that the note and mortgage declared upon in the Petition are just, genuine, due and unpaid; that there is due and owing to the Plaintiff from the Defendants, «mortgagors», the sum of «unpaid\_balance\_written\_out» Dollars (\$«unpaid\_balance\_numerical»), which is the principal balance, plus interest thereon at the rate of «interest\_rate\_numerical»% per annum from «interest\_due\_date», such amount equaling \$«per\_diem» per day; the Plaintiff has expended the sum of \$«real\_estate\_taxes» for real estate taxes, \$«property\_insurance» for property insurance, \$«late\_charges» for late charges, \$«pmi\_insurance» for pmi insurance premiums, \$«property\_preservation\_fees» for property preservation fees, \$«property\_inspections» for property inspections, \$«other\_amount» for «other\_description», \$«total\_escrow\_advances» for escrow advances and \$«corporate\_advances» for corporate advances; plus the sum of \$«abstract\_fees\_numerical» for Reports of Title, plus accruing costs and the costs of this action including reasonable attorney's fees of \$«attorney\_fees» for which sum the Plaintiff is entitled to judgment.

The Court further finds that the Mortgage is a lien upon the premises therein described and the improvements thereon, prior and superior to any right, title, lien or interest of the Defendants or any of them therein.

The Court further finds that the premises is a one family dwelling and not agricultural land as defined in Iowa Code Section 9H or 175.2 or used for an agricultural purpose as defined in Iowa Code Section 535.13 or used for farming as defined in Iowa Code Section 175.2.

The Court further finds that no demand for delay of sale has been filed pursuant to 654.22, Iowa Code, and that proper notice was given pursuant to 654.20, Iowa Code, and therefore no rights of redemption will be allowed after sheriff's sale and the purchaser at the sale is entitled to immediate possession of the property.

The Court further finds that the Plaintiff has a valid first and paramount lien and that the priority of the junior lien holders is established as follows:

«Defendant3»

«Defendant4»

«Defendant5»

«Defendant6»

and if there is a surplus remaining after satisfying the Mortgage and all costs, including amount advanced for taxes, insurance and attorney's fees, it shall be paid to the junior lien holders as their interest may appear.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be and the same is hereby rendered in favor of the Plaintiff and against the real estate described herein, in the amount of «judgment\_amount\_written\_out» Dollars (\$«judgment\_amount\_numerical»), as follows:

Principal	\$«unpaid_balance_numerical»
Interest at «interest_rate_numerical»% from	«interest_due_amount_numerical»
«interest_due_date_numerical» to	
«interest_accrual_date_numerical»	
Escrow Account – Deficit	«total_escrow_advances»
Abstracting Costs	«abstract_fees_numerical»
Attorney’s Fees and Costs	«attorney_fees»
Late Charges	«late_charges»
Real Estate Taxes	«real_estate_taxes»
Property Insurance	«property_insurance»
PMI Insurance Premiums	«pmi_insurance»
Property Preservation Fees	«property_preservation_fees»
Corporate Advances	«corporate_advances»
«other_description»	«other_amount»
Property Inspections	«property_inspections»
 Total Due as of	 \$«judgment_amount_numerical»
«interest_accrual_date_numerical»	

together with interest on the principal amount of \$«unpaid\_balance\_numerical» from «interest\_accrual\_date\_written\_out» at the rate of «interest\_rate\_numerical»% per annum until satisfied, and also for the costs of this action, plus accruing costs and attorney fees incurred after the date hereof, including but not limited to any and all advances made by the Plaintiff for taxes, insurance, property preservation and other costs between the time of the Foreclosure Decree and the time of the Sheriff’s Sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said judgment be and the same is hereby declared to be a lien upon the following-described real estate in «Court\_County» County, Iowa to wit:

«legal\_description» «extra\_legal»

together with all easement rights presently existing or later arising.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Mortgage declared upon, dated «mortgagenote\_date», filed «mortgage\_file\_date», in «bookpage» of the

«Court\_County» County Recorder's Office, be, and the same is hereby foreclosed; that the right, title, lien and interest of the Plaintiff in and to said mortgaged premises and all improvements thereon be and they are hereby declared prior and superior to the right, title and the lien and interest of the Defendants, or any of them in and to said mortgaged real estate.

IT IS FURTHER ORDERED that special execution issue for the sale of said real estate above-described, together with all improvements thereon, for the purpose of paying the judgment herein rendered in favor of the Plaintiff, and that thereunder said real estate, or so much thereof as is necessary be sold to satisfy Plaintiff's said judgment; that from and after the sale under said special execution, Defendants, and each of them, and all persons claiming by, through or under them, are forever cut off, barred and foreclosed of all right, title, lien and interest to said mortgaged premises.

IT IS FURTHER ORDERED that Sheriff's Deed issue immediately to the purchaser at said sale; that a Writ of Possession shall be issued under the seal of the Court directed to the Sheriff of «Court\_County» County, Iowa, commanding him to put the purchaser at said sale or his successor in interest into immediate possession of the premises, pursuant to Section 654.20.

IT IS FURTHER ORDERED that the Court will retain jurisdiction of this action for all matters to produce merchantable title in the buyer at the Sheriff's Sale.

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JUDGE



Copies to:

«Plaintiff\_atty»

Davis, Brown, Koehn, Shors & Roberts, P.C.  
The Financial Center  
666 Walnut, Suite 2500  
Des Moines, IA 50309

«Defendant1»

«Defendant1\_street»

«Defendant1\_cityzip»

«Defendant1\_atty»

«Defendant1\_atty\_street»

«Defendant1\_atty\_cityzip»

Attorney for «Defendant1»

«Defendant2»

«Defendant2\_street»

«Defendant2\_cityzip»

«Defendant2\_atty»

«Defendant2\_atty\_street»

«Defendant2\_atty\_cityzip»

Attorney for «Defendant2»

«Defendant3»

«Defendant3\_street»

«Defendant3\_cityzip»

«Defendant3\_atty»

«Defendant3\_atty\_street»

«Defendant3\_atty\_cityzip»

Attorney for «Defendant3»

«Defendant4»

«Defendant4\_street»

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«Defendant4\_atty\_street»

«Defendant4\_atty\_cityzip»

Attorney for «Defendant4»

«Defendant5»

«Defendant5\_street»

«Defendant5\_cityzip»

«Defendant5\_atty»

«Defendant5\_atty\_street»

«Defendant5\_atty\_cityzip»

Attorney for «Defendant5»

«Defendant6»

«Defendant6\_street»

«Defendant6\_cityzip»

«Defendant6\_atty»

«Defendant6\_atty\_street»

«Defendant6\_atty\_cityzip»

Attorney for «Defendant6»

«Defendant7»

«Defendant7\_street»

«Defendant7\_cityzip»

«Defendant7\_atty»

«Defendant7\_atty\_street»

«Defendant7\_atty\_cityzip»

### PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on \_\_\_\_\_, 20\_\_ by:

- |  |  |
|--|--|
| <input type="checkbox"/> U.S. Mail       | <input type="checkbox"/> FAX               |
| <input type="checkbox"/> Hand Delivered  | <input type="checkbox"/> Overnight Courier |
| <input type="checkbox"/> Federal Express | <input type="checkbox"/> Other:            |

Signature: \_\_\_\_\_

IN THE IOWA DISTRICT COURT FOR «COURT\_COUNTY» COUNTY

---

«PLAINTIFF»,	)	EQUITY NO. «Case_No»
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	FORECLOSURE DECREE
«DEFENDANT1», «DEFENDANT2»,	)	
«DEFENDANT3», «DEFENDANT4»,	)	
«DEFENDANT5», «DEFENDANT6» and	)	
«DEFENDANT7»,	)	
Defendants.		

---

BE IT REMEMBERED that on this \_\_\_\_ day of \_\_\_\_\_, 2006, the above-entitled cause coming on for hearing on Motion for (Default)(Summary) Judgment, Plaintiff, «Plaintiff», appearing by its attorney, «Plaintiff\_atty»; and the Defendants, «default\_defendants», appearing not and after inspection of the file and proof of service, the Court finds that good and sufficient service of original notice has been had on the Defendants, including the Defendants, «publication\_defendants», by publication pursuant to Iowa Rules of Civil Procedure, the Court further finds that the (Plaintiff sought diligently to learn the mailing address of these Defendants and that such an address is unknown although diligent inquiry has been made to ascertain the same,)(address to which the copy of the Notice was sent was the last known mailing address of «publication\_defendants»,) and that the Plaintiff has also served the Defendants, «default\_defendants», with NOTICE OF INTENT TO FILE WRITTEN APPLICATION FOR DEFAULT pursuant to RCP 1.972(2)(a) by sending such Notice by

ordinary mail to the last known address of the party claimed to be in Default and its attorney, if known, and more than ten days have elapsed since serving such Notice.

The Court further finds that it has jurisdiction of the subject matter and parties to this action. The Court further finds, after hearing the proofs of the Plaintiff and the statement of counsel, that the issues are with the Plaintiff and that the Plaintiff is entitled to judgment and decree as prayed. The Court further finds that the note and mortgage declared upon in the Petition are just, genuine, due and unpaid; that there is due and owing to the Plaintiff from the Defendant(s), «mortgagors», the sum of «unpaid\_balance\_written\_out» Dollars (\$«unpaid\_balance\_numerical»), which is the principal balance, plus interest thereon at the rate of «interest\_rate\_numerical»% per annum from «interest\_due\_date», such amount equaling \$«per\_diem» per day; the Plaintiff has expended the sum of \$«real\_estate\_taxes» for real estate taxes, \$«property\_insurance» for property insurance, \$«late\_charges» for late charges, \$«pmi\_insurance» for pmi insurance premiums, \$«property\_preservation\_fees» for property preservation fees, \$«property\_inspections» for property inspections, \$«other\_amount» for «other\_description», \$«total\_escrow\_advances» for escrow advances and \$«corporate\_advances» for corporate advances; plus the sum of \$«abstract\_fees\_numerical» for Reports of Title, plus accruing costs and the costs of this action including but not limited to any and all advances made by the Plaintiff for taxes, insurance, property preservation and other costs between the time of the Foreclosure Decree and the time of the Sheriff's Sale including reasonable attorney's fees of \$«attorney\_fees», for which sum the Plaintiff is entitled to judgment.

The Court further finds that the Mortgage declared upon is a lien upon the premises therein described and the improvements thereon, prior and superior to any right, title, lien or interest of the Defendant or any of them therein.

The Court further finds that the premises is a one family dwelling and not agricultural land as defined in Iowa Code Section 9H or 175.2 or used for an agricultural purpose as defined in Iowa Code Section 535.13 or used for farming as defined in Iowa Code Section 175.2.

The Court further finds that proper notice was given pursuant to 654.20, Iowa Code, and that a demand for delay of sale has been filed by the Defendant(s), «mortgagors», pursuant to 654.21, Iowa Code, and therefore the sale should be delayed for six (6) months from and after entry of decree herein. No rights of redemption will be allowed after sheriff's sale and the purchaser at the sale is entitled to immediate possession of the property.

The Court further finds that the Plaintiff has a valid first and paramount lien and that the priority of the junior lien holders is established as follows:

«Defendant3»

«Defendant4»

«Defendant5»

«Defendant6»

and if there is a surplus remaining after satisfying the Mortgage and all costs, including amount advanced for taxes, insurance and attorney's fees, it shall be paid to the junior lien holders as their interest may appear.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be and the same is hereby rendered in favor of the Plaintiff and against the real estate

described herein, in the amount of «judgment\_amount\_written\_out» Dollars

(\$«judgment\_amount\_numerical»), as follows:

Principal	\$«unpaid_balance_numerical»
Interest at «interest_rate_numerical»% from «interest_due_date_numerical» to «interest_accrual_date_numerical»	«interest_due_amount_numerical»
Escrow Account - Deficit	«total_escrow_advances»
Abstracting Costs	«abstract_fees_numerical»
Attorney's Fees and Costs	«attorney_fees»
Late Charges	«late_charges»
Real Estate Taxes	«real_estate_taxes»
Property Insurance	«property_insurance»
PMI Insurance Premiums	«pmi_insurance»
Property Preservation Fees	«property_preservation_fees»
Corporate Advances	«corporate_advances»
«other_description»	«other_amount»
Property Inspections	«property_inspections»
Total Due as of «interest_accrual_date_numerical»	\$«judgment_amount_numerical»

together with interest on the principal amount of \$«unpaid\_balance\_numerical» from «interest\_accrual\_date\_written\_out» at the rate of «interest\_rate\_numerical»% per annum until satisfied, and also for the costs of this action, plus accruing costs and attorney fees incurred after the date hereof, including but not limited to any and all advances made by the Plaintiff for taxes, insurance, property preservation and other costs between the time of the Foreclosure Decree and the time of the Sheriff's Sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said judgment be and the same is hereby declared to be a lien upon the following-described real estate in «Court\_County» County, Iowa to wit:

«legal\_description» «extra\_legal»

together with all easement rights presently existing or later arising.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Mortgage declared upon dated «mortgagenote\_date», filed «mortgage\_filed\_date», in «bookpage», of the «Court\_County» County Recorder's Office, be, and the same is hereby foreclosed; that the right, title, lien and interest of the Plaintiff in and to said mortgaged premises and all improvements thereon be and they are hereby declared prior and superior to the right, title and the lien and interest of the Defendant, or any of them in and to said mortgaged real estate.

IT IS FURTHER ORDERED that Special Execution issue for the sale of the real estate, together with all improvements thereon, and that upon the expiration of six (6) months from the entry of this Decree, the Sheriff's Sale may be held for the sale of said real estate and thereunder said real estate be sold for the purpose of paying the judgment rendered in favor of the Plaintiff. That from and after the sale under said special execution, Defendants, and each of them, and all persons claiming by, through or under them, are forever cut off, barred and foreclosed of all right, title, lien and interest to said mortgaged premises.

IT IS FURTHER ORDERED that Sheriff's Deed issue immediately to the purchaser at said sale; that a Writ of Possession shall be issued under the seal of the Court directed to the Sheriff of «Court\_County» County, Iowa, commanding him to put the purchaser at said sale or his successor in interest into immediate possession of the premises, pursuant to Section 654.20.

IT IS FURTHER ORDERED that the Court will retain jurisdiction of this action for all matters to produce merchantable title in the buyer at the Sheriff's Sale.

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JUDGE

Copies to:

«Plaintiff\_atty»  
Davis, Brown, Koehn, Shors & Roberts, P.C.  
The Financial Center  
666 Walnut, Suite 2500  
Des Moines, IA 50309

«Defendant1»  
«Defendant1\_street»  
«Defendant1\_cityzip»

«Defendant1\_atty»  
«Defendant1\_atty\_street»  
«Defendant1\_atty\_cityzip»  
Attorney for «Defendant1»

«Defendant2»  
«Defendant2\_street»  
«Defendant2\_cityzip»

«Defendant2\_atty»  
«Defendant2\_atty\_street»  
«Defendant2\_atty\_cityzip»  
Attorney for «Defendant2»

«Defendant3»  
«Defendant3\_street»  
«Defendant3\_cityzip»

«Defendant3\_atty»  
«Defendant3\_atty\_street»  
«Defendant3\_atty\_cityzip»  
Attorney for «Defendant3»

«Defendant4»  
«Defendant4\_street»  
«Defendant4\_cityzip»

«Defendant4\_atty»  
«Defendant4\_atty\_street»  
«Defendant4\_atty\_cityzip»  
Attorney for «Defendant4»

«Defendant5»  
«Defendant5\_street»  
«Defendant5\_cityzip»

«Defendant5\_atty»  
«Defendant5\_atty\_street»  
«Defendant5\_atty\_cityzip»  
Attorney for «Defendant5»

«Defendant6»  
«Defendant6\_street»  
«Defendant6\_cityzip»

«Defendant6\_atty»  
«Defendant6\_atty\_street»  
«Defendant6\_atty\_cityzip»  
Attorney for «Defendant6»

«Defendant7»  
«Defendant7\_street»  
«Defendant7\_cityzip»

«Defendant7\_atty»  
«Defendant7\_atty\_street»  
«Defendant7\_atty\_cityzip»



### PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on \_\_\_\_\_, 20\_\_ by:

- |  |  |
|--|--|
| <input type="checkbox"/> U.S. Mail       | <input type="checkbox"/> FAX               |
| <input type="checkbox"/> Hand Delivered  | <input type="checkbox"/> Overnight Courier |
| <input type="checkbox"/> Federal Express | <input type="checkbox"/> Other:            |

Signature: \_\_\_\_\_

## URBAN RENEWAL—COSTS—COUNTY AUDITOR

H.F. 2777

West's No. 141

AN ACT RELATING TO CERTIFICATION TO THE COUNTY AUDITOR OF THE AMOUNT OF  
LOANS, ADVANCES, INDEBTEDNESS, OR BONDS ISSUED OR INCURRED FOR URBAN  
RENEWAL PURPOSES.*BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:*

Section 1. Section 403.19, subsection 5, Code 2005, is amended to read as follows:

5.a. A municipality shall certify to the county auditor on or before December 1 the amount of loans, advances, indebtedness, or bonds which qualify for payment from the special fund referred to in subsection 2, for each urban renewal area in the municipality, and the filing of the certificate shall make it a duty of the auditor to provide for the division of taxes in each subsequent year without further certification, except as provided in paragraphs "b" and "c", until the amount of the loans, advances, indebtedness, or bonds is paid to the special fund. If any loans, advances, indebtedness, or bonds are issued which qualify for payment from the special fund and which are in addition to amounts already certified, the municipality shall certify the amount of the additional obligations on or before December 1 of the year such obligations were issued, and the filing of the certificate shall make it a duty of the auditor to provide for the division of taxes in each subsequent year without further certification, except as provided in paragraphs "b" and "c", until the amount of the loans, advances, indebtedness, or bonds is paid to the special fund. Any subsequent certifications under this subsection shall not include amounts previously certified.

A certification made under this paragraph "a" shall include the date that the individual loans, advances, indebtedness, or bonds were initially approved by the governing body of the municipality.

b. If the amount certified in paragraph "a" is reduced by payment from sources other than the division of taxes, by a refunding or refinancing of the obligation which results in lowered principal and interest on the amount of the obligation, or for any other reason, the municipality on or before December 1 of the year the action was taken which resulted in the reduction shall certify the amount of the reduction to the county auditor.

c. In any year, the county auditor shall, upon receipt of a certified request from a municipality filed on or before December 1, increase the amount to be allocated under subsection 1 in order to reduce the amount to be allocated in the following fiscal year to the special fund, to the extent that the municipality does not request allocation to the special fund of the full portion of taxes which could be collected. Upon receipt of a certificate from a municipality, the auditor shall mail a copy of the certificate to each affected taxing district.

Approved May 24, 2006.

## MORTGAGES—REAL ESTATE—CIVIL ACTIONS

H.F. 2786

West's No. 142

AN ACT RELATING TO CIVIL ACTIONS AND THE FORECLOSURE OF REAL ESTATE  
MORTGAGES, AND PROVIDING FEES AND APPLICABILITY PROVISIONS.*BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:*

Section 1. Section 602.8102, subsection 113, Code Supplement 2005, is amended by striking the subsection.

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Additions are indicated by underline; deletions by strikeout

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Sec. 2. Section 615.1, Code 2005, is amended to read as follows:

**615.1. Execution on certain judgments prohibited**

From and after January 1, 1934, no judgment in an action for the foreclosure of a real estate mortgage, deed of trust, or real estate contract upon property which at the time of judgment is either used for an agricultural purpose as defined in section 535.13 or a one-family or two-family dwelling which is the residence of the mortgagor, or in any action on a claim for rent or judgment assigned by a receiver of a closed bank or rendered upon credits assigned by the receiver of a closed bank when the assignee is not a trustee for depositors or creditors of the bank, the reconstruction finance corporation or any other federal governmental agency to which the bank or the receiver is or may be indebted shall be enforced null and void, all liens shall be extinguished, and no execution shall be issued thereon and no force or vitality given thereto for any purpose other than as a setoff or counterclaim after the expiration of a period of two years, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action, from the entry thereof. As used in this section, "mortgagor" means a mortgagor or a borrower executing a deed of trust as provided in chapter 654 or a vendee of a real estate contract.

Sec. 3. Section 615.2, Code 2005, is amended to read as follows:

**615.2. Revival of certain judgments prohibited**

After January 1, 1934, no action or proceedings shall not be brought in any court of this state for the purpose of renewing or extending such judgment or prolonging the life thereof. Provided, however, that nothing herein shall prevent the continuance of such judgment in force against the property subject to foreclosure only for a longer period by the voluntary written stipulation of the parties judgment creditor and the equitable titleholders, filed in said cause the action or proceedings.

Sec. 4. Section 624.23, Code 2005, is amended by adding the following new subsection:

**NEW SUBSECTION. 7.** If a case file has been sealed by the court, or if by law the court records in a case are not available to the general public, any judgments entered in the case shall not become a lien on real property until either the identity of the judgment creditor becomes public record, or until the judgment creditor, in a public document in the case in which judgment is entered, designates an agent and office, consistent with the requirements of section 490.501, on which process on the judgment creditor may be served. Service may be made on the agent in the same manner as service may be made on a corporate agent pursuant to section 490.504. An agent who has resigned without designating a successor agent and office and who is otherwise unavailable for service may be served in the manner provided in section 490.504, subsection 2, at the agent's office of record.

Sec. 5. Section 626.78, Code 2005, is amended to read as follows:

**626.78. Notice to defendant**

If the debtor is in actual occupation and possession of any part of the land levied on, the officer having the execution shall, at least twenty days previous to such sale, serve the debtor with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale, which notice shall be served in the manner provided by rule of civil procedure 1.305(1). However, upon the filing of an affidavit that the debtor is intentionally evading service of process or otherwise cannot be served despite repeated and diligent attempts, the notice may be served by placing the notice in a plain opaque envelope, addressed to the defendant and marked personal and confidential, by affixing the envelope to a main entrance of the premises subject to sale, and by mailing a copy of the notice to the debtor at the debtor's last known address by ordinary mail.

Sec. 6. Section 626.80, unnumbered paragraph 2, Code 2005, is amended to read as follows:

The sheriff shall receive and give a receipt for a sealed written bid submitted prior to the public auction. The sheriff may require all sealed written bids to be accompanied by payment of any fees required to be paid at the public auction by the purchaser, to be returned if the

person submitting the sealed written bid is not the purchaser. The sheriff shall keep all written bids sealed until the commencement of the public auction, at which time the sheriff shall open and announce the written bids as though made in person. A party who has appeared in the foreclosure may submit a written bid, which shall include a facsimile number or electronic mail address where the party can be notified of the results of the sale. If a party submitting a winning written bid does not pay the amount of the bid in certified funds in the manner in which the sheriff in the notice directs, such bid shall be deemed canceled and the sheriff shall certify the next highest bidder as the successful bidder of the sale either within twenty-four hours for an electronic funds transfer or forty-eight hours otherwise, of notification of the sale results. A sheriff may refuse to accept written bids from a bidder other than the judgment creditor if the bidder or the bidder's agent in the action has demonstrated a pattern of nonpayment on previously accepted bids.

Sec. 7. NEW SECTION.

654.9A. Release of superior liens by bond

At any time prior to the court's decree, the plaintiff, or a person guaranteeing title of the plaintiff's mortgage, may post a bond with sureties to be approved by the clerk and apply to the court to release the claim against the property of any person claiming a lien superior to that of the plaintiff in the property subject to foreclosure. The bond shall be in an amount not less than twice the amount of the claim, and notice of the bond and the court's order of release shall be served on the claimant. Unless the claimant has appeared in the foreclosure action, the service shall be by personal service. Unless the claimant files an action on the bond within twelve months from service of the notice, the claimant shall be barred from any further remedy. In a successful action on the bond, the court may award the claimant reasonable attorney fees. A guarantor filing such a bond shall be subrogated to any defenses which the plaintiff may have against the adverse claimant, including but not limited to a defense of lack of equity in the mortgaged property to secure the adverse claim in its proper priority.

Sec. 8. NEW SECTION.

654.15A. Notice of sale to junior creditors

A junior creditor may file and serve on the judgment creditor a request for notice of the sheriff's sale. Such notice shall include a facsimile number or electronic mail address where the creditor shall be notified of the sale. At least ten days prior to the date of sale, the attorney for the junior creditor shall file proof of service of such request for notice. Upon motion filed within thirty days of the sale, the court may set aside a sale in which a junior creditor who requests notice is damaged by the failure of the sheriff or the judgment creditor to give notice pursuant to this section.

Sec. 9. NEW SECTION.

654.15B. Right to intervene—Notice

A lender may serve a judgment creditor in a foreclosure action with notice in substantially the following form, advising the creditor that the property that is the subject of the foreclosure action shall be foreclosed and describing the creditor's interest in the action and that unless such creditor intervenes in the foreclosure action such creditor shall lose the creditor's interest in the mortgaged property. Unless the creditor intervenes within thirty days of the service of notice, the court may adjudicate the creditor's rights against the property as if the creditor had been added as a defendant and default had been entered against the defendant. If a creditor cannot be located for personal service, the plaintiff may, at any time prior to sixty days before the date of trial, amend the petition as a matter of right to add the creditor as a defendant for service by publication as provided by rule. The notice prescribed by this section is as follows:

IN A FORECLOSURE ACTION  
 NOTICE OF PENDING FORECLOSURE  
 To: (Name of creditor)

Date: (Enter date) \_\_\_\_\_

Plaintiff has filed a foreclosure of mortgage against the property of (titleholder) located at (street address of property) which is legally described as (legal description). This foreclosure was filed as (Plaintiff v. Defendant), Case # ( ), in the Iowa District Court for ( ) County. You have an apparent interest in the property because (description of creditor's interest). If you desire to protect this interest, you have the right to intervene in the foreclosure action within thirty days of the service of notice by filing an intervention with the clerk of court in ( ) County. Unless you intervene in the foreclosure the foreclosure may eliminate any interest you have in the property but will not otherwise affect your rights. If you have any questions about this notice, contact your attorney. Whether or not you intervene, the foreclosure may have certain tax consequences to you about which you should consult your tax advisor.

Name, address, and telephone number of attorney representing plaintiff.

Sec. 10. NEW SECTION

**654.17. Recision of foreclosure**

At any time prior to the recording of the sheriff's deed, and before the mortgagee's rights become unenforceable by operation of the statute of limitations, the judgment creditor, or the judgment creditor who is the successful bidder at the sheriff's sale, with the written consent of the mortgagor may rescind the foreclosure action by filing a notice of recision with the clerk of court in the county in which the property is located along with a filing fee of fifty dollars. In addition, such person shall pay a fee of twenty-five dollars for documents filed in the foreclosure action which the plaintiff requests returned. Upon the filing of the notice of recision, the mortgage loan shall be enforceable according to the original terms of the foreclosure and the rights of all persons with an interest in the property may be enforced as if the foreclosure had not been filed. However, any findings of fact or law shall be preclusive for purposes of any future action unless the court, upon hearing, rules otherwise. The mortgagor shall be assessed costs, including reasonable attorney fees, of foreclosure and recision if provided by the mortgage agreement.

Sec. 11. NEW SECTION

**654.17A. Sale free of liens**

At any time during the pendency of the foreclosure, the plaintiff may apply to the court for an order approving an offer for a commercially reasonable sale of the property free of the claims of the parties to the action and other persons served with notice pursuant to section 654.15B. A copy of the offer shall be attached to the application and the application shall contain a written consent to the proposed sale by all equitable titleholders who have not abandoned the property. The court may grant the motion unless a party in interest objects in writing during such time as the court may prescribe. A person filing an objection with a claim junior to the plaintiff shall either apply for assignment of senior claims pursuant to section 654.8, otherwise provide adequate protection to senior creditors, or establish that a sheriff's sale is substantially more likely than the proposed sale to provide the creditor with more favorable satisfaction of its lien. Pending resolution of the rights of the parties and persons served with notice pursuant to section 654.15B, the court shall place the net proceeds of the sale in escrow after payment of reasonable closing costs. The rights of such persons to the escrowed funds shall be determined in the same manner as their rights to the property that was sold.

Sec. 12. Section 655.5, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

**655.5. Instrument of satisfaction**

When the judgment is paid in full, the mortgagee shall file with the clerk a satisfaction of judgment which shall release the mortgage underlying the action. A mortgagee who fails to file a satisfaction within thirty days of receiving a written request shall be subject to reasonable damages and a penalty of one hundred dollars plus reasonable attorney fees.

incurred by the aggrieved party, to be recovered in an action for the satisfaction or acknowledged by the party aggrieved.

Sec. 13. Section 655A.3, Code 2005, is amended by adding the following new subsection:

**NEW SUBSECTION. 2A.** The mortgagee may file a written notice required in subsection 1 together with proof of service on the mortgagor with the recorder of the county where the mortgaged property is located. Such a filing shall have the same force and effect on third parties as an indexed notation entered by the clerk of the district court pursuant to section 617.10 and shall commence on the filing of proof of service on the mortgagors and terminate on the filing of a rejection pursuant to section 655A.6, an affidavit of completion pursuant to section 655A.7, or the expiration of ninety days from completion of service on the mortgagors, whichever occurs first.

Sec. 14. Section 655A.9, Code 2005, is amended to read as follows:

#### 655A.9. Application of chapter

This chapter does not apply to real estate used for an agricultural purpose as defined in section 535.13, or to a one or two family dwelling which is, at the time of the initiation of the foreclosure, occupied by an equitable titleholder.

Sec. 15. Section 655.4, Code 2005, is repealed.

Sec. 16. Applicability.

1. Except as provided in subsection 2, this Act applies to actions commenced on or after July 1, 2006.

2. The section of this Act enacting section 624.23, subsection 7, applies to judgments entered on or after July 1, 2007.

Approved May 24, 2006.

### SALES TAX—EXEMPTIONS—SOLAR ENERGY EQUIPMENT

S.F. 2398

West's No. 143

#### AN ACT PROVIDING A SALES TAX EXEMPTION FOR PURCHASES OF SOLAR ENERGY EQUIPMENT.

*BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:*

Section 1. Section 423.3, Code Supplement 2005, is amended by adding the following new subsection:

**NEW SUBSECTION. 89.** The sales price from the sale of solar energy equipment. For purposes of this subsection, "solar energy equipment" means equipment that is primarily used to collect and convert incident solar radiation into thermal, mechanical, or electrical energy or equipment that is primarily used to transform such converted solar energy to a storage point or to a point of use.

Approved May 30, 2006.

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